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ABSTRACT

As one in a series of eight articles written by different professionals concerned with Alaska Native land claims, this article focuses on the debate of environmental issues prior to passage of the Alaska Land Claims Settlement Act. Designed to stimulate careful political/historical reading and discussion at an advanced secondary or adult level, this booklet defines key words and presents 12 open-ended questions relative to the article. Major developments presented in the text include: (1) the pressures which posited the environmentalists in opposition to a coalition between the State of Alaska, the oil industry, the Nixon Administration, and the Natives--a coalition brought about by the desire to gain early settlement, lift the land freeze of 1966, and begin oil production on the North Slope, as oil production would benefit all coalition members; (2) the Senate's moderate position involving a joint Federal-State land-use planning commission to function in an advisory capacity vs the House's "either/or" debate on environmental issues (comprehensive planning vs the position that environmental control and land claims were separate issues); (3) the final compromise which stipulated Native priorities in land selection rights, partial State priorities under the Statehood Act, and advisory Federal-State role in land-use planning, and temporary withdrawal of certain lands for public interest study areas. (JC)

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environmental issues in the land claims

One of a Series of Articles on

THE NATIVE LAND CLAIMS

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ENVIRONMENTAL ISSUES IN THE LAND CLAIMS

By

Guy Martin
Alaska Legislative Aide
to the Late Congressman, Nick Begich

One of a Series o Articles on

THE NATIVE LAND CLAIMS

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ARTWORK: CANDACE OWERS

JUNE 1975

TO THE READER

This booklet is one of a collection of articles written by people who are interested in Native land claims. As you will see, all of the people do not agree. They present their ideas for you to read and discuss. You may be excited about some of their ideas because you think they are absolutely right, or very wrong. When you have finished reading the articles, you will probably have done a lot of thinking about Native land claims and Alaskan politics.

Politics is not an easy field to understand. And yet politics is what the Native land claims are all about. Most of the articles were written by people who have spent a lot of time working in the world of politics. These people have a whole vocabulary which most students have not yet learned. So, to help students understand the reading, there is at the beginning of each article a list of definitions of terms. Any words in *italics* are explained for you at the beginning of that article, or an earlier one.

At the end of some articles are questions which you can ask yourself. In the margin, next to the question are numbers. If you go back to paragraphs in the article with the same numbers, and reread, you can increase your understanding. We cannot say you will always have definite answers but you may form your point of view.

ARTICLES AND AUTHORS

Stock, Corporations, and the Native Land Claims Settlement	Stephen Conn Associate Professor of Law ISEGR, University of Alaska
Environmental Issues in the Land Claims	Guy Martin Alaska Legislative Aide to the Late Congressman, Nick Begich
New Tribes for New Times	Guy Martin Alaska Legislative Aide to the Late Congressman, Nick Begich
The Politics of Passage	Guy Martin Alaska Legislative Aide to the Late Congressman, Nick Begich
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Village Alaska	Harold Napoleon Director, Yupiktak Bista
Future Land Use Planning Alternatives for Alaska	Walter B. Parker Associate in Systems Planning Arctic Environmental Information and Data Center University of Alaska
Planning How to Use Land in Village Alaska	Bob Weeden Professor of Wildlife Management University of Alaska

ENVIRONMENTAL ISSUES IN THE LAND CLAIMS

There were times, around Alaska Statehood in 1959 and during the 1960's, when the Alaska Native Land Claims were an unexciting and unpopular cause, pursued by only a handful of Native leaders. Those times ended during 1968, when one of the largest oil fields in the world was discovered on the North Slope of Alaska. From that time on, interest in Alaska's land was great, and the Native Land Claims were discovered along with the oil.

The pressure on Alaska's land was intense. The oil companies wanted to develop the oil lands as soon as possible, and to gain new lands for oil exploration. In addition, a proposal was advanced to build a pipeline across Alaska to transport the oil to outside markets.

The State of Alaska was eager to encourage the development of North Slope oil reserves. A giant lease sale of oil lands was held which brought nearly one billion dollars to the State. This amount was to combine with tax revenues from the oil, and with the general prosperity of an economic boom, to make Alaska financially secure. The State wanted more land to lease, as well as for other purposes, and was eager to get on with its selection of land under the Statehood Act. The State had gained the right, with Statehood, to select 103 million acres out of the 365 million total acres in the State. In 1971 only about 15 million acres had actually been selected.

In addition to these pressures, the private citizens and businesses of the State wanted land for oil and mining exploration, for homesteads, for recreation, and a number of other uses for which land can be gained from the Federal and State governments.

In spite of this pressure, there were two things standing directly between these many interests and the land they wanted so badly. The first was the simple fact that of all the land in Alaska, ninety-six percent was in the firm ownership and control of the Federal government. The second factor was that a "land-freeze" covered all of this Federal land. What the "freeze" did was to prevent the transfer of any of this land to the people who wanted it. There was every sign that the freeze would remain in effect until the Native Land

Claims were resolved. So the real thing standing between the land and those who wanted it was the settlement of the Native Land Claims themselves.

The land freeze was originally imposed in 1966 by Secretary of Interior, Stewart Udall, who planned to create pressure for a settlement. Without such pressure, it was feared that the land of Alaska would be gradually drained away, leaving the Natives with a claim but no land to select even if they won their cause. Under the freeze, no one - not even the State - could get land.

Although most non-Native Alaskans hated the freeze from the beginning, the pressure because of it was never as great as when the oil discoveries reminded everyone, including the Natives, how valuable even the tundra of the North Slope could be. Also, Alaskans hoped that, somehow, the freeze would be lifted, either by lawsuit or by a new and friendlier Secretary of the Interior. A lawsuit failed, but when Alaska Governor Walter Hickel was appointed by Richard Nixon as Secretary of Interior in 1968, there was new hope.

Hickel wanted to lift the freeze, and had even brought the unsuccessful lawsuit to do so while he was Governor. But it quickly became clear that the United States Senate would not confirm him in the new office unless he promised to leave the freeze in effect. Under pressure, some of it from Alaska Native leaders who knew the value of the freeze, Hickel made the promise, and the freeze was preserved. For the State, the oil industry, the Alaskans who wanted land, and the Natives, this was a clear signal that the only real alternative was to work for a settlement of the land claims.

More importantly, some people began to realize that the settlement of the land claims had become much more than a simple real estate and money transaction with the Alaska Natives; it had become the focus of a major decision for the future of the entire State: how the lands of Alaska would be used. It would be a major decision because of all the interests backed up behind the settlement. On the day that the settlement became law, each of these interests would become free to exert *their* own demands on the land of Alaska, and if the settlement act exercised no control on this process, much of the valuable land in Alaska would be quickly committed to diverse and unplanned uses.

Even though recognition of the importance of the settlement began to grow, the specific issues regarding the environment of Alaska were not discussed much. Many people did not even recognize these issues, some recognized them but did not want to talk about them. Only a few people felt that the

future of Alaska's environment was actually the key issue in the entire settlement. In the end, it was these few who were probably correct, as the face of the State was transformed by the results of the settlement.

The most important environmental issues related to passage of the Alaska Native land claims act were fairly simple. The issues included the Trans-Alaska Pipeline, the need for statewide land-use planning as a part of the settlement, and the need for the settlement to set aside land for parks, wildlife refuges, and wilderness areas, in addition to the land set aside for the Natives.

Also, there was the broader issue of how the land distribution in the settlement would affect people's overall lives. The choices made would affect living patterns of all Alaskans through changes in community structures, and shifts of population between urban and rural areas. For the inter- action between man and nature, every choice was crucial.

Overall, the most important issue was whether the settlement would take advantage of the unique combination of pressures and circumstances to make comprehensive decisions for all of Alaska's land. If not, it would be narrowly limited to the Native Claims only, leaving all the important environmental questions until later. Later, many feared would be too late.

It would be too late because the day after the settlement became law, the unity which led to the settlement would be gone, and the pressure on the land would be from hundreds of diverse sources. Then, it would be difficult to take the sort of comprehensive statewide action which was possible only at the time of the settlement.

Everything which has been described up to this point was part of the setting that existed in 1971 when the 92nd Congress prepared to take up the Alaska Native Land Claims. Although most of the hearings and attention focused on the Native demands in the settlement, and on the provisions of other possible bills, the environmental issues were also raised. The issues of the Trans-Alaska Pipeline, land-use planning, and the need for parks and wilderness were all put forward by national environmental organizations such as the Sierra Club, Friends of the Earth and others. Mostly, these issues were ignored, but when they were not, they were met with the objection that, it included, they would slow down the settlement bill, and make it harder to pass.

The Alaska Natives joined in some of the disapproval of these environmental issues at this early stage, perhaps because of the threat of delay, but for other reasons as well. The issue of the Trans- Alaska Pipeline is a good example. This proposal to build an 800 mile pipeline across Alaska had always been controversial. Many believed that the opponents of the pipeline would try to include a provision in the land claims settlement stopping the pipeline. Some Native villages which were near the pipeline route did not want the pipeline. It might ordinarily be expected that most Natives would oppose the pipeline because of its possible threat to hunting and fishing areas. However, the basic Native position either favored the pipeline, or said little about it.

One of the main reasons for this position was a specific provision in nearly every proposed version of the land claims bill, including the Native version and the Administration version. This provision added a special compensation plan to the settlement in addition to whatever money the Natives would receive directly from the Federal Treasury. This additional compensation would occur only when the North Slope oil was produced, and when the State of Alaska placed a tax, or "royalty" on the oil. When that occurred, the Natives would receive a share of every dollar that State took through its royalty. This Native share, which was set at two cents on every dollar, is called an "overriding royalty" and had some very important side effects.

The first was that it represented a State contribution to the settlement, something that was lacking in previous years. The more important effect was that it placed the Natives in an informal but strong partnership with the State of Alaska and the oil industry, all receiving cash when oil production began, and sharing a common interest in early development.

It is difficult to determine where this "overriding royalty" provision came from but it is certain that it was crucial as a pressure in the final settlement. Along with the matter of the land freeze, it was one of the pressures which produced the coalition of the Natives, the State, the Nixon Administration, and the oil industry which was so important for the final success of the bill.

Such things were disappointing and frustrating for the environmental supporters. They had expected to have the Natives as their partners in support of the idea that the land of Alaska must be preserved as much as possible in its natural state, so as to best protect the traditional hunting and fishing practices on which the land claims were based.

Actually, some disagreement among Natives did exist on these questions. Some rural villages and individuals felt that protection of the land was a higher priority than extra money or speed of settlement. The final Native position on environmental issues was basically neutral perhaps because of differences of opinion among Natives. However, Native neutrality had to be regarded as a setback for the environmental cause.

Another disappointment for environmentalists was the general lack of support for their position within the State of Alaska. Most Alaskans favored the pipeline, and were more interested in an early settlement than in provisions for land-planning and parks, which might cause delay. Vocal, but small, Alaskan environmental organizations were unable to influence the prevailing public opinion in Alaska. It became clear that the national environmental organizations would have to lead the fight for protecting the Alaskan environment.

This was a good year for these organizations to lead such a fight, as they seemed stronger than ever before. Earlier in 1971, they had defeated in Congress, the funding for the giant supersonic transport planes (S.S.T. s), a feat that many felt to be the most important environmental victory in recent years. These organizations, and concerned people across the country, regarded Alaska in a very special way, as a place still free of the environmental problems of other states, with a magnificent natural environment, and still having the potential to avoid all the mistakes that had been made elsewhere.

As the land claims hearings drew to a close in the House and Senate, and the formal work on the actual bill began, it became clear that the environmental issues could not be avoided. The House and the Senate handled these issues very differently, however.

In the Senate, a bill which provided for joint federal-state land-use planning in Alaska had been introduced earlier by Senator Mike Gravel. This bill consisted of both sound public policy and diplomatic avoidance of the toughest issues. For example, the bill provided for a well-structured joint federal-state land-use planning commission for Alaska - one which could serve as a model for others in the future. At the same time, the commission had only advisory power. The entire plan made certain that the land freeze would end and the pipeline be faced with no additional burdens. In effect, whatever planning was accomplished had no guarantee of being carried out.

With some changes, and after some difficulties, this bill was later incorporated into the Senate version of the land claims bill. Its inclusion is one of the main reasons that environmental issues never became a major controversy in the Senate.

The argument was in the House, where there was much less agreement on the wisdom of including special environmental provisions in the bill. Alaska Congressman Nick Begich shared the Senate view that some provision was essential, both for public policy considerations, and to avoid a later fight which might threaten the bill. Begich prepared an amendment based largely on the moderate Senate provision, and attempted to include it as the House bill was being prepared in the Indian Affairs Subcommittee. The amendment was rejected so firmly that stronger environmental amendments were not even attempted.

In the House, a moderate amendment was not acceptable to either side of the environmental issue. Chairman Wayne Aspinall of the Interior Committee and other committee leaders all felt that the amendment was too demanding and irrelevant to the land claims bill altogether. They claimed that all land-use issues were separate from the land claims and should be treated in another bill which applied to the whole country, not just Alaska.

At the same time, environmental organizations and the Members of Congress who shared their views believed the proposed amendment was far too weak, and were prepared to fight to get a better one. Their position was that there should be a comprehensive land planning process for Alaska which should be binding rather than advisory. They also argued that, as the owner of nearly all Alaska's land, the federal government should dominate the planning process, and that all of this planning should take place before the Settlement Act was fully carried out.

This position met strong opposition. Alaska Natives saw such a plan as a threat to their hard-won rights to the land; the State saw it as taking away Alaska's rights; the oil industry and Alaskan businessmen saw it as a threat to the pipeline and the economic future of Alaska. Nearly everyone, including the Nixon Administration, saw it as causing delays in passage of the bill.

The rejection of all environmental provisions in the Indian Affairs Subcommittee was partly the work of Wayne Aspinall. He forced an agreement where many different interest groups agreed to support all aspects

of the settlement bill as it emerged from the subcommittee. If they refused to agree, he threatened to delay everything. It was later called an oath "signed in blood" by those seeking to add an environmental amendment on the floor of the House. It was really a strong informal agreement between those most involved in the settlement struggle. By agreeing, all differences were compromised in the Indian Affairs Subcommittee bill, and basically unified support was insured throughout the process. Such agreements, forced by threats of delay, are not commendable, but they are not unusual in a legislative body. This particular agreement led to the final, and prompt passage of the land claims bill in the 92nd Congress, yet it almost completely stopped consideration, in the House, of many questions of real importance, including the crucial ones concerning the environment.

Even in the face of these handicaps, several Members of the House had begun early to develop environmental amendments to the settlement bill. One of these amendments, prepared by Congressmen John Saylor of Pennsylvania and Morris Udall of Arizona became the battleground for the entire environmental issue in the House.

The Saylor-Udall amendment was long and complicated, but it contained several basic provisions. First, it withdrew all Federal land in Alaska and authorized the Secretary of Interior to dispose or open the land on a piecemeal basis as he saw fit. This provision was instantly recognized as no more than a new type of "freeze". It still placed the State, and all other interests, under the control of the Department of Interior, which had been disliked and resisted in Alaska since Statehood.

Second, the amendment created a planning commission to recommend selection areas to the Natives, the State, and the Federal agencies, and having the power to zone for the use of Alaska's land. The selection recommendations were not binding but the zoning was. Since the commission would have a majority of Federal members, this zoning provision was immediately regarded as a major threat to Alaska. Finally, the amendment provided for approximately 135 million acres of "national interest study areas". Eight-five million acres were specifically named in the amendment (including areas in the Brooks Range, Copper River, and Iliamna regions) and 50 million acres the Secretary of Interior could designate anywhere in Alaska within 6 months after the settlement became law. All of this land was to be studied for use as Federal land, primarily as national parks, wilderness areas and wildlife refuges. A period of five years was set for the study and for action by Congress. During this time, any State or Native selections which

conflicted with study areas could not be honored, except for certain areas around each Native village.

Needless to say, this amendment did not inspire the friendship of all those described earlier who wanted early and open access to the land of Alaska. What the amendment did do, however, was to present a clearly drawn version of the strongest environmental positions, and to set the battle lines for a vote in the House.

The Saylor-Udall amendment was soundly defeated in the full House Interior Committee, while the rest of the claims settlement bill passed easily. After passage in the House Interior Committee, the Bill was sent to the House for the vote of all 435 Representatives. During the 22 days between committee passage and action on the floor of the House, there was a serious struggle for votes.

The line-ups for the struggle were incredibly mismatched. On the side of those who said "Vote for the land claims bill, but vote against the Saylor-Udall amendment" were the Interior Committee leadership, the leadership of the House, the Chairmen of most House Committees, the Nixon Administration, the State of Alaska, the oil and business interests, and the Alaska Natives themselves.

Against this powerful and unusual coalition stood a small bipartisan group of independent House members backed by environmentally concerned organizations both in Washington and Alaska. The environmentalists were attempting to win their point on the merits in an arena which yielded more easily to power. Their point: "Vote for the land claims settlement, but first amend it to make it responsible."

The details of the struggle leading to the vote are fascinating and certain points stand out. First, it became clear quite early that in spite of the size and importance of the land claims settlement bill, it would pass easily and without great controversy. This was a victory. The debate over the Saylor-Udall amendment overshadowed debate on the settlement bill.

Misinformation was everywhere, with both sides of the debate contributing. At one time, it was charged that the Saylor-Udall amendment stopped both the pipeline and all Native land selections. Neither charge was true in the final version of the amendment, but the resulting confusion damaged the

amendment's chances.

The amendment also suffered from the rigid procedures of the 435 Member House, where minor changes and adjustment in legislation are not so easy as in the smaller Senate. This factor was combined with the determination of those who wanted no land-use planning amendment at all to frustrate chances for a compromise on this issue. In the end, it was virtually an "all or nothing" vote, and the result under these difficult circumstances was remarkable.

After a spirited debate which lasted two days on the floor of the House, a vote was taken on the Saylor- Udall amendment. There were many who believed the outcome to be in real doubt right to the end. The amendment was defeated on a vote of 217 to 177. However, the 177 votes for the amendment showed that an environmental amendment was important to many of the Representatives. Without question, the joint House-Senate Conference Committee would have to consider this when it met to resolve differences in the two bills.

The conference committee did respond, and the land claims bill which has now become law owes a great deal to the struggles of the very few who held out for comprehensive environmental provisions in the bill. The final result is a compromise, and a decision on its success will not be possible for years.

Under the compromise, most of which is contained in Section 17 of the final bill, these major parts of the environmental position are still clearly visible:

1. Alaska's land is not open to an immediate "land-grab." The land selection rights of the Natives are given a clear priority. The land selection rights of the State are given a partial priority for lands already selected under the Statehood Act. Entry for mineral prospecting is also allowed, and after an absolute 90-day continued freeze of all Federal programs (such as homesteading and mining claims), a gradual phase-in of these programs will probably occur.

2. The land-use planning commission is still included in the final bill, but on a basis which balances the Federal and State roles. The bill provides the Commission with broad responsibilities but only advisory powers. Most of the study and recommendations of the Joint Federal-State Land-Use Planning Commission, but none subject to its control. Since the Commission has only advisory powers, its success will depend on its

influence based on expertise. This is a major burden to carry when so many of the decisions will be made in the political arenas of Alaska and Washington, D.C., and mostly at the Federal level.

3. Finally, there is the feature of the "public-interest study areas," which are contained in Section 17 of the Act, and have created considerable controversy in Alaska. Section 17 of the Settlement Act attempts to insure that all areas having possible future value to the public are not subjected to immediate private pressures or use without full study. Under these two sections (17 (d) (1) and 17 (d) (2), the Secretary of Interior has withdrawn for such study a total of over 125 million acres. Under 17 (d) (2), 80 million acres were withdrawn to be studied for possible inclusion in the National Park, Forest, Wildlife Refuge or Wild Rivers system. Under 17 (d) (1), 45 million additional acres were withdrawn under less restrictive guidelines to be studied for any appropriate classification under Federal land laws without the two and five-year deadlines.

The effect of these withdrawals was 1) to avoid the rush on Federal land which threatened to follow the end of the old land freeze, and 2) to retain control of Alaska's prime land at the Federal level. Many Alaskans see the withdrawals as a massive Federal land grab which violates the spirit and intent of the Land Claims Settlement and the Statehood Act.

Recently, the studies of these lands have been completed, and the Secretary of Interior has recommended over 83 million acres for inclusion in the "four systems" (parks, forests, refuges, wild rivers). This decision will have to be made by Congress, and it will be the subject of a sharp debate.

The State will take the position that the Federal government has overstepped its authority while other will insist that setting aside even 80 million acres in Federal reserves is not enough to protect Alaska for the future.

Up to this point, most would conclude that the Land Claims will is reasonably successful from the environmental standpoint. The outcome of the decision on the 80 million acres will be another chapter in that story. Still, the real decision will only come years later when we can all see whether we live in a better Alaska, with the high quality of life we expect.

Guy Martin
Alaska Legislative Aide
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TERMS

LEASE SALE	a lease gives the right to use something for a certain length of time – in this case to drill for _____ years.
ECONOMIC BOOM	a time when a lot of money is made by businesses and taxing agencies; businesses spend a lot of money to make more, and government agencies tax them and wage-earners who are making extra money.
ENVIRONMENTALISTS	people who want land to be left in a natural state or to be used by people taking great care not to destroy or pollute it.
ZONE	an area delineated on a map where land uses are specified.

1. Why did each of these groups want the Native Land Claims settled?

   a. State of Alaska b. oil companies c. non-Native Alaskans d. Alaska Natives

2. Mr. Martin sums up the major environmental issue in paragraph 9 - Whether the Land Claims Settlement would include provisions on "how the lands of Alaska would be used." " Were provisions on land use finally included before the bill passed?

3. What was the major objection to environmental amendments when they were first suggested?

4. "It might ordinarily be expected that most Natives would oppose the pipeline because of its possible threat to hunting and fishing areas." Do you agree with this statement in paragraph 16?

5. What is the reason that Mr. Martin puts forward, for Native support (or lack of opposition) for the pipeline?

6. Who might have been responsible for getting the "overriding royalty" provision written into the Land Claims bill? Think of what each of these groups stood to gain:

   a. Alaska Natives b. Oil industry c. State of Alaska d. Nixon Administration

7. Why did individuals and organizations outside Alaska work so hard for environmental amendments to the Land Claims Settlement Act?

8. Mr. Martin describes Senator Gravel's bill for a joint federal-state land-use planning agency as consisting of "both sound public policy and diplomatic avoidance of the toughest issues." Do you agree?

9. In a social studies text or government document, find the responsibility for the land which the Interior Department has. Try to relate it to the arguments by the Interior Committee against an environmental amendment.

10. The Saylor-Udall amendment was defeated in the House Interior Committee. It was also defeated in the House. However, one very important group recognized the amendment. How did so much of the Saylor-Udall amendment become law?

11. The Joint Federal-State Land-Use Planning Commission is advisory. According to Mr. Martin "its success will depend upon influence based on expertise." You might check with local Native corporation and Bureau of Land Management officials to see how influential and expert they consider Commission members to be.

12. What do you think of the final environmental amendments outlined?